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Attorney for Defendant Jovann Alonso-Perez

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOVANN ALONSO-PEREZ,

Defendant.

Crim. Case No. 08-CR-2352-LAB

**NOTICE OF MOTION AND MOTION
FOR DISCOVERY; MOTION TO
SUPPRESS BECAUSE OF ILLEGAL
STOP (ILLEGAL SEIZURE) AND
TO SUPPRESS STATEMENTS OF
DEFENDANT ALONSO BECAUSE
OF COERCION OF DEFENDANT
ALONSO**

Date: August 25, 2008

Time: 2:00 p.m.

Department: Judge Burns

TO: UNITED STATES ATTORNEY KAREN P. HEWITT AND HER ASSISTANT,
DAVID D. LESHNER

PLEASE TAKE NOTICE that on th 25th day of August, 2008, at 2:00 p.m., or as soon
thereafter as it may be heard, Defendant Jovann Alonso-Perez, through his attorney, will move this
Court for discovery, to suppress because of illegal stop (illegal seizure) and to suppress statements
of Defendant Alonso because of coercion of Defendant Alonso, and for leave to file additional
motions.

//

1 This Motion is based upon the attached Points and Authorities filed herewith.

2 Respectfully submitted,

3 *s/Lynn H. Ball*

4 Date: August 11, 2008

5 _____
Lynn H. Ball
Attorney for Defendant Jovann Alonso-Perez
E-mail: lhball@sbcglobal.net

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Crim. Case No. 08-CR-2352-LAB
)	
Plaintiff,)	POINTS AND AUTHORITIES IN
)	SUPPORT OF MOTION FOR
vs.)	DISCOVERY
)	
JOVANN ALONSO-PEREZ,)	
)	
Defendant.)	Date: August 25, 2008
)	Time: 2:00 p.m.
)	Department: Judge Burns

STATEMENT OF FACTS

On July 4th at about 10:30 p.m., Defendant Jovann Alfredo Alonso-Perez was a passenger in a 1992 Lexus being driven by co-defendant Aldo Miramontes. Another passenger was a fourteen-year old cousin of Jovann Alonso named José Daniel Torres-Alonso. Suddenly, lights were flashed on as they were driving in Highway 111 and a Jeep full of ICE and Customs Agents pulled over the Lexus and the Lexus promptly stopped. The doors were opened and several ICE officers jerked all the passengers out, threw them on the ground and handcuffed them. They were taken to headquarters in El Centro, held in jail cells and subsequently, the juvenile was released sometime after midnight. Defendant Jovann Alonso was questioned at least twice and gave a

1 statement allegedly stating that he was part of the scout vehicle for a marijuana-smuggling
2 operation.

3 Defendant Alonso contends that he had told the agents that he was part of a scout vehicle
4 only as a result of coercion and pressure and that in fact, he knew nothing about the marijuana. The
5 discovery provided to date only says in very summary fashion that it was determined that the Lexus
6 was the scout vehicle and was therefore stopped and the occupants arrested; however, there are no
7 facts stated indicating what facts gave the officers reasonable cause to believe that the Lexus was
8 a scout vehicle.

9
10 I. MOTION FOR DISCOVERY

11 Mr. Alonso-Perez moves for production by the government of:

12 1. Copies of any written or recorded statements he made; the substance of any statements
13 made by him which the government intends to offer in evidence at trial; defendant's prior record,
14 if it has not already been provided in its entirety; any books, papers, documents, photographs,
15 tangible objects, or copies or portions thereof which the government intends to use as evidence-
16 in-chief at trial; all notes of the arresting agents. Mr. Alonso-Perez also specifically requests that
17 all arrest reports which relate to the circumstances surrounding his arrest or any questioning, if such
18 reports have not already been produced in their entirety, be turned over to him. This request
19 includes, but is not limited to, any rough notes, records, reports, transcripts or other documents in
20 which statements of Mr. Alonso-Perez are contained. This also includes the substance of any oral
21 statements which the government intends to introduce at trial and any written summaries of
22 defendant's statements, summaries of the defendant's oral statements contained in the handwritten
23 notes of the government agent. This is all discoverable under *Federal Rule of Criminal Procedure*
24 Section 16(A)(1)(a) and *Brady v. Maryland*, 373 U.S. 83 (1963).

25 Mr. Alonso-Perez also requests any response to any *Miranda* warnings which may have
26 been given to him on the day of his arrest. See *United States v. McElroy*, 697 F. 2nd 459 (2nd Cir.
27 1982).

1 2. All documents, statements, agents reports, and tangible evidence favorable to Mr.
2 Alonso-Perez the issue of guilt and/or which affect the credibility of the government's case. This
3 evidence must be produced pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States*
4 *v. Agurs*, 427 U.S. 97 (1976).

5 3. All evidence, documents, records of judgments, convictions, photographs and tangible
6 evidence, and information pertaining to any prior arrests and convictions for prior bad acts.
7 Evidence of prior record is available under *Federal Rule of Criminal Procedure* 16(A)(1)(b);
8 evidence of prior similar actions discoverable under *Federal Rule of Criminal Procedure*
9 16(A)(1)(c) and *Federal Evidence Code* Section 404(b) and 609;

10 Mr. Alonso-Perez also requests the government to be ordered to provide discovery of any
11 prior similar acts which the government intends to introduce into evidence pursuant to *Federal*
12 *Rule of Evidence* 404(b). Mr. Alonso-Perez must have access to this information in order to make
13 appropriate motions to exclude the use of such evidence at trial. See *United States v. Cook*, 609
14 F. 2nd 1174 (9th Cir. 1985).

15 Mr. Alonso-Perez requests a pretrial conference on the morning of trial in order to resolve
16 any issues raised by the government's intention of introducing evidence pursuant to *Federal Rule*
17 *of Evidence* Sections 404 and 609.

18 4. All evidence seized as a result of any search, either warrantless or with warrant, in this
19 case. This is available under *Federal Rule of Criminal Procedure* 16(A)(1)(c).

20 5. All arrest reports, investigator's notes, memos from arresting officers, sworn statements,
21 and prosecution reports pertaining to Mr. Alonso-Perez, including any photo spread shown to
22 witnesses. These are available under *Federal Rule of Criminal Procedure* 16(A)(1)(b) and (c),
23 *Federal Rule of Criminal Procedure* 26.2 and 12(i).

24 6. All of the documents and tangible objects, including photographs, books, papers,
25 documents, videotapes, or buildings or places or copies of portions thereof which are material to
26 Mr. Alonso-Perez's defense or intended to be used in the government's case-in-chief or were
27 obtained from or belonged to Mr. Alonso-Perez.
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1 7. The personnel file of the interviewing agents containing any complaints of assaults,
2 abuse of discretion and authority and/or false arrests.

3 8. Any evidence that any prospective government witness is biased or prejudiced against
4 the defendant, has a motive to falsify or distort his or her testimony. See *Pennsylvania v. Richie*,
5 480 U.S. 39 (1987).

6 9. Any evidence that any prospective government witness has engaged in any criminal act,
7 whether or not resulting in a conviction. See Rule 608(b) *Federal Rules of Evidence* and *Brady*
8 *v. Maryland, supra*.

9 10. Any evidence that any prospective witness is under investigation by federal, state or
10 local authorities for any criminal conduct. See *United States v. Chitney*, 760 F. 2nd 425 (2nd Cir.
11 1985).

12 11. Any evidence, including any medical or psychiatric report or evaluation, tending to
13 show that any prospective witnesses' ability to perceive, remember, communicate, or testify is
14 impaired; and any evidence that a witness has ever used narcotics or other controlled substances,
15 or has ever been an alcoholic. See *United States v. Strifler*, 851 F. 2nd 1197 (9th Cir. 1988) and
16 *Chavis v. North Carolina*, 637 F. 2nd 213, 224 (4th Cir. 1980).

17 12. The name and last known address of each prospective government witness. See
18 *United States v. Napue*, 834 F. 2nd 1311 (7th Cir. 1987).

19 13. The name and last known address of every witness to the crime or crimes charged (or
20 any of the overt acts committed in furtherance thereof) who will not be called as a government
21 witness. *United States v. Cadet*, 727 F. 2nd 1453 (9th Cir. 1984).

22 14. The name of any witness who made an arguably favorable statement concerning the
23 defendant or who could not identify him or who was unsure of his identity or participation in the
24 crime charged. See *Jackson v. Wainright*, 390 F. 2nd 288 (5th Cir. 1968).

25 15. The defendant requests disclosure of any statement that may be relevant to any possible
26 defense or a contention that he may assert. *United States v. Bailleaux*, 685 F. 2nd 1105 (9th Cir.
27 1982).
28

1 16. All material to which defendant is entitled pursuant to 18 *U.S.C.* Section 3500,
2 including any tape recordings made by the government of any material witnesses. Defendant is
3 also entitled to these tape recordings if they prove exculpatory pursuant to *Brady v. Maryland*,
4 *supra*.

5 17. Pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), Mr. Alonso-Perez requests
6 all statements and/or promises, express or implied, made to any government witnesses, in exchange
7 for their testimony in this case.

8 With respect to any informant or witness that the government intends to rely upon at trial,
9 Mr. Alonso-Perez requests the disclosure of the following impeaching information. See *United*
10 *States v. Brumell Alvarez*, 991 F. 2nd 1452 (9th Cir. 1992).

11 1. Any and all records and information reviewing prior felony convictions, convictions for
12 a crime involving false statements or dishonesty, any juvenile adjudications attributed to the
13 informant, including, but not limited to, relevant rap sheets. See *United States v. Alvarez-Lopez*,
14 559 F. 2nd 1155 (9th Cir. 1977).

15 2. Any and all records and information revealing prior misconduct or bad acts attributed
16 to any material witness, including, but not limited to, any acts of misconduct conducted by him or
17 her. See *Federal Rule of Evidence* 608(B)(3).

18 3. Any and all consideration or promises of consideration given to the informant/material
19 witness or expected or hoped for by him. By consideration, defendant refers to absolutely anything,
20 whether bargained for or not, which arguably could be of value or use to him or to persons of
21 concern to him. This request includes, but is not limited to, formal or informal or indirect and
22 direct compensation, favorable treatment or recommendations or other assistance with respect to
23 any pending or potential criminal, parole, probation, pardon, clemency, civil, tax court, IRS, court
24 of claims, administrative or other dispute in the United States.

25 Consideration also encompasses any favorable treatment or recommendations with respect
26 to criminal, civil or tax immunity grants, relief from forfeiture, payments of money, permission to
27 keep fruits of criminal activity, including cash, vehicles, aircraft, rewards or fees, witness fees and
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1 special witness fees, provisions of food, clothing, shelter, transportation, legal services or other
2 benefits, placement in a witness protection program and anything else that arguably could reveal
3 an interest, motive or bias in them in favor of the government or against the defense or which could
4 act as inducement to testify or to color testimony. See *Bagley v. Lumpkin*, 719 F. 2nd at 1462.

5 4. Any and all threats, express or implied, direct or indirect or other coercion made or
6 directed against any informant/material witness, criminal prosecutions, investigations, or potential
7 prosecutions pending, or which could be brought against them, any probationary, parole, deferred
8 prosecution or custodial status of the witness and any civil, tax court, court of claims,
9 administrative, or other pending or potential legal disputes or transactions with the government
10 over which the government has a real, apparent, or perceived influence. See *Davis v. Alaska*, 415
11 U.S. 308 (1974).

12 5. The existence and identification of each occasion on which any informant has testified
13 before the court, grand jury, or other tribunal or body in connection with this or other similar cases.
14 See *United States v. Alvarez-Lopez*, 521 F. 2nd 556 (8th Cir. 1975).

15 6. Any and all records and information which arguably could be helpful or useful to the
16 defense in impeaching or otherwise detracting from the probative force of the government's
17 evidence or which arguably could lead to such records or such information. This request includes
18 any evidence tending to show the narcotic habits of any informant at the time of relevant events,
19 and the informant's personal dislike of the defendant. See *Guam v. De la Rosa*, 438 F. 2nd 396.

20 7. The names and criminal numbers of any and all other criminal cases, state or federal, in
21 which any informant has been involved, either as an informant or as defendant. Mr. Alonso-Perez
22 is making these multiple requests because, in order to properly prepare a defense in this matter, it
23 is important that the defense be aware of all information related to the informant's credibility and
24 background. See *Giglio v. United States*, supra.

25 8. Request that all evidence be preserved. It is specifically requested that all evidence be
26 preserved. It is specifically requested that in the event that the government does desire the
27 destruction of evidence, that defense be informed in writing, that the defense have an opportunity
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1 to inspect the evidence, that the defense have the opportunity to object to the destruction of the
2 evidence. It is the contention of the defense that in the event that the government fails to notify the
3 defense of the destruction of the evidence, that said destruction will be in bad faith and if the
4 government fails to give the defense an opportunity to seek a court order of the preservation of the
5 evidence, that said destruction would be in bad faith.

6 Respectfully submitted,

7 *s/Lynn H. Ball*

8 Date: August 11, 2008

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10 Attorney for Jovann Alonso-Perez
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Crim. Case No. 08-CR-2352-LAB

**POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
SUPPRESS BECAUSE OF ILLEGAL
STOP (ILLEGAL SEIZURE) AND
MOTION TO SUPPRESS
STATEMENTS OF DEFENDANT
ALONSO BECAUSE OF COERCION
OF DEFENDANT ALONSO**

Date: August 25, 2008

Time: 2:00 p.m.

Department: Judge Burns

STATEMENT OF FACTS

On July 4th at about 10:30 p.m., Defendant Jovann Alfredo Alonso-Perez was a passenger in a 1992 Lexus being driven by co-defendant Aldo Miramontes. Another passenger was a fourteen-year old cousin of Jovann Alonso named José Daniel Torres-Alonso. Suddenly, lights were flashed on as they were driving in Highway 111 and a Jeep full of ICE and Customs Agents pulled over the Lexus and the Lexus promptly stopped. The doors were opened and several ICE officers jerked all the passengers out, threw them on the ground and handcuffed them. They were taken to headquarters in El Centro, held in jail cells and subsequently, the juvenile was released sometime after midnight. Defendant Jovann Alonso was questioned at least twice and gave a

1 statement allegedly stating that he was part of the scout vehicle for a marijuana-smuggling
2 operation.

3 Defendant Alonso contends that he had told the agents that he was part of a scout vehicle
4 only as a result of coercion and pressure and that in fact, he knew nothing about the marijuana. The
5 discovery provided to date only says in very summary fashion that it was determined that the Lexus
6 was the scout vehicle and was therefore stopped and the occupants arrested; however, there are no
7 facts stated indicating what facts gave the officers reasonable cause to believe that the Lexus was
8 a scout vehicle.

9 I. MOTION TO SUPPRESS FOR ILLEGAL SEIZURE OF VEHICLE.

10 Stops of a vehicle can be considered seizures in accorded Fourth Amendment protection
11 even though the purpose of the stop is limited and the resulting detention quite brief. See *Delaware*
12 *v. Prouse*, 440 U.S. 648, 653 (1979) *U.S. v. Sharpe*, 470 U.S. 655, 682 (1985).

13 As with pedestrian stops, a vehicle stop must be supported by a reasonable suspicion and
14 analyzed under the framework established by *Terry v. Ohio*. See *U.S. v. Chavez*, 993 F. 2d 431,
15 434 (5th Cir. 1993). See also *Prouse*, *supra*, 440 U.S. at 663.

16 In the instant case, it appears that there was not just a temporary detention of the vehicle;
17 rather there was a stop and an immediate seizure of all occupants of the vehicle who were taken
18 into custody.

19 The government has the burden of showing that the government had not only reasonable
20 suspicion to stop the vehicle, but probable cause to believe that the occupants of the vehicle were
21 engaged in specific criminal activity; that is, acting as a scout vehicle for the marijuana-laden
22 vehicle.

23 In the event that there is insufficient evidence of either reasonable suspicion or in fact
24 probable cause to make such arrest, then any subsequent statements or evidence deduced as a result
25 of this seizure must be suppressed.

26 ///

1 II. THE STATEMENTS OF JOVANN ALSONO-PEREZ MUST BE SUPPRESSED, AS
2 THEY WERE INVOLUNTARY AND AS A RESULT OF LAW ENFORCEMENT
3 COERCION.

4 Defense counsel is aware of its obligation to provide a Declaration of the defendant and said
5 Declaration will be subsequently filed. Unfortunately, the defendant has been held this entire time
6 at Imperial County Jail and because of summer schedule and vacation, defendant counsel has only
7 had one opportunity to talk with Mr. Alonso.

8 The conditions at ICJ for interviewing defendants is abominable. There is no privacy and
9 one must talk to an individual over a telephone and because of the nature of the glass, you cannot
10 really even see the individual or look into their eyes or do any kind of reasonable interview of the
11 defendant.

12 Once defendant Alonso is at either GEO or the MCC or some other place where there can
13 be a contact visit, then a detailed interview with the assistance of an interpreter can be conducted
14 and a Declaration prepared for the defendant.

15 In any event, in order to comply with the court's rules with regard to timeliness in motions,
16 defense counsel at this time moves to suppress the statement of Defendant Alonso as being
17 involuntary pursuant to and as a result of coercion and alleges the inculpatory statement of Alonso
18 was not a voluntary statement and not the product of an essentially free and unconstrained choice
19 by its maker. See *Coloazo v. Estelle*, 940 F. 2d at 416, quoting *Culombe v. Connecticut*, 367 U.S.
20 568, 602 (1961).

21 The government bears the burden of proving that the statement is voluntary by a
22 preponderance of the evidence. See *Connelly*, 479 U.S. at 168.

23 The Supreme Court has held that coercive police activity is a necessary predicate to the
24 finding that a confession is not voluntary within the meaning of the due process clause of the
25 Fourteenth Amendment. See *Colorado v. Connelly*, 479 U.S. 157, 167 (1986).

26 The determination of voluntariness of a confession or admission requires consideration of
27 the "totality of circumstances" including personal history, level of educational attainment and
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1 physical condition of the accused, as well as the circumstances of the police officers eliciting the
2 statement. See Crane, 476 at 691.

3 The facts in the instant case will show that the defendant was a relatively young person,
4 inexperienced, a citizen of Mexico, and was held basically *incommunicado* for several hours before
5 being questioned, was extremely frightened to the point where he was willing to admit to
6 practically anything, even if it was untrue.

7 The government will not be able to show by a preponderance of the evidence that the
8 alleged inculpatory statement or confession of Defendant Alonso was voluntary.

9 Respectfully submitted,

10
11 *s/Lynn H. Ball*

12 Date: August 11, 2008

13 _____
14 Lynn H. Ball
15 Attorney for Jovann Alonso-Perez
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9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

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14 JOVANN ALONSO-PEREZ,)

15 Defendant.)
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Crim. Case No. 08-CR-2352-LAB

**POINTS AND AUTHORITIES IN
SUPPORT OF LEAVE TO FILE
ADDITIONAL MOTIONS**

Date: August 25, 2008
Time: 2:00 p.m.
Department: Judge Burns

STATEMENT OF FACTS

20 On July 4th at about 10:30 p.m., Defendant Jovann Alfredo Alonso-Perez was a passenger
21 in a 1992 Lexus being driven by co-defendant Aldo Miramontes. Another passenger was a
22 fourteen-year old cousin of Jovann Alonso named José Daniel Torres-Alonso. Suddenly, lights
23 were flashed on as they were driving in Highway 111 and a Jeep full of ICE and Customs Agents
24 pulled over the Lexus and the Lexus promptly stopped. The doors were opened and several ICE
25 officers jerked all the passengers out, threw them on the ground and handcuffed them. They were
26 taken to headquarters in El Centro, held in jail cells and subsequently, the juvenile was released
27 sometime after midnight. Defendant Jovann Alonso was questioned at least twice and gave a
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3 Defendant Alonso contends that he had told the agents that he was part of a scout vehicle
4 only as a result of coercion and pressure and that in fact, he knew nothing about the marijuana. The
5 discovery provided to date only says in very summary fashion that it was determined that the Lexus
6 was the scout vehicle and was therefore stopped and the occupants arrested; however, there are no
7 facts stated indicating what facts gave the officers reasonable cause to believe that the Lexus was
8 a scout vehicle.

9 I. MOTION FOR PERMISSION TO FILE ADDITIONAL MOTIONS.

10 It is requested that defendant have the opportunity to file additional Motions if issues
11 are raised in discovery that merit such motions.

12 Respectfully submitted,

13 *s/Lynn H. Ball*

14 Date: August 11, 2008

15 _____
16 Lynn H. Ball
17 Attorney for Jovann Alonso-Perez
18 E-mail: lhball@sbcglobal.net

PROOF OF SERVICE

C.C.P. §1013(A), C.R.C. 2003(3), 2005(i)

UNITED STATES OF AMERICA, STATE OF CALIFORNIA, COUNTY OF SAN DIEGO
USA V. JOVANN ALONSO-PEREZ
UNITED STATES DISTRICT COURT
CASE NO. 08-CR-2352-LAB

I, the undersigned, certify and declare that I am a citizen of the United States, over the age of eighteen years, employed in the County of San Diego, State of California, and not a party to this within action. My business address is 1560 Scott Street, San Diego, CA 92106.

On August 11, 2008, I served the foregoing documents described as **NOTICE OF MOTION AND MOTION FOR (1) DISCOVERY (2) TO SUPPRESS DUE TO ILLEGAL SEIZURE (3) TO SUPPRESS STATEMENTS (4) AND LEAVE TO FILE FURTHER MOTIONS; POINTS AND AUTHORITIES IN SUPPORT** on all interested parties in this action by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them:

David D. Leshner, AUSA
U.S. Attorney's Office
Southern District of California, Criminal Division
880 Front Street, Room 6293
San Diego, CA 92101
619-557-7163
david.leshner@usdoj.gov

BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid of postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

FEDERAL: I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None
the last known address, at which place there is delivery service of mail from the United States Postal Service.

EXECUTED on August 11, 2008, at San Diego, California.

I declare under penalty of perjury that the foregoing is true and correct.


Audrey Tomaselli